

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Tom K. Wentzel, et al. Art Unit: 3761
Serial No.: 10/032,383
Filed: December 21, 2001
Confirmation No.: 5427
For: DISPOSABLE ABSORBENT ARTICLE HAVING ONE PIECE MECHANICAL
FASTENING SYSTEM
Examiner: Michele Kidwell

October 26, 2006

REPLY BRIEF

This is a reply to the Examiner's Answer mailed September 13, 2006. Appellants' reply is being filed to respond to arguments made by the Examiner for the first time in the Examiner's Answer. Particularly, appellants take this opportunity to address some of the Examiner's comments set forth in the Response to Argument section (pages 9-11) of the Examiner's Answer.

Before doing so, Appellants first note that the Examiner, faced with another opportunity to set forth the particular structure being relied on from Kuen et al. as corresponding to the fastener, single piece of material, anchor end and user end as recited in claim 55¹, has declined to do so. Compare, e.g., the Examiner's rejection of claim 55 (no reference numbers or passages of Kuen et al. cited, just a general reference to Fig. 7) with the Examiner's rejection of claim 52 in which specific reference numbers are used to correspond the structure of Kuen et al. to the structure recited in claim 52.

¹ See Appellants' Appeal Brief, page 9.

Appellants are then left to guess what the Examiner's position is, and why the Examiner has declined to point to the structure of Kuen et al. on which the rejection of claim 55 is based. For these reasons alone the Examiner has failed to make a prima facie showing of anticipation.

Moreover, the reasons for the Examiner's omission of reference numbers and cited passages in the rejection of claim 55 is rendered more apparent by the Response to Argument (item 10) of the Examiner's Answer. In particular, the Examiner's characterization of Kuen et al. with respect to claim 55 is different than the characterization of Kuen et al. with respect to claim 52. In particular, the Examiner rejected claim 52 by characterizing the strap member (76A) as the "fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon, at least a portion of the active fastening surface being located on the fastener for anchoring to said article on landing material located generally at said first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to said article on landing material located generally at said second waist region recited in claim 52. Faced with a similar recitation in claim 55, however, the Examiner now appears to be characterizing the front and back hook patches (72, 74) of Kuen et al. as corresponding to the recited fastener, with the back of the hook patch comprising the anchor end and the front (the hook side) of the hook patch comprising the user end.²

² See, e.g., page 10 of the Examiner's Answer including reference to column 13, lines 55-61 of Kuen et al. which is clearly directed to the hook patch (72, 74) construction.

As noted previously by Appellants, the hook patches simply cannot be properly characterized as a fastener that comprises a single piece of material having an anchor end that attaches to the front waist region of the article and a user end that attaches to the back waist region of the article. Rather, the hook patches of Kuen et al. are disposed only on the front waist region, or only on the back waist region. But a single piece of hook patch material is not attached to both the front waist region and the back waist region.

Rather, only the strap 76A does this, which is why the Examiner characterized the strap as such in rejecting claim 52. However, as appellants also noted previously, Kuen et al. fail to teach or even suggest that the ends of the strap are configured to provide different shear strengths.

The Examiner's mischaracterization of the hook patches of Kuen et al. as a single piece material that can be attached at one end to the front waist region of the article and at its opposite end to the back waist region of the article thus results in a number of new positions taken by the Examiner in the Examiner's Answer. In particular, notwithstanding the fact that the hook patches cannot have the recited fastener comprised of the single piece material that connects to both the front and back waist region, the Examiner now takes the position that Kuen et al. disclose the recited shear strength differential because Kuen et al. teach that the size and shape of the hook patches (72, 74) may vary in size and shape. Page 10 of the Examiner's Answer, citing column 13, lines 55-61 of Kuen et al.

However, this cited passage clearly refers to all of the hook patches (e.g., both the front hook patches 72 and the back hook patches 74) collectively. That is, Kuen et al. at best

teach that all of the hook patches may be collectively changed in size or shape. There is no teaching, express or inherent, that the front hook patches (72) may be a different size or shape than the back hook patches (74). Thus, even under the Examiner's mischaracterization of Kuen et al., there is still no teaching or suggestion of the shear strength differential.

The Examiner now relies on the claim language in claim 55 that the "the article is configured to have the claimed shear strengths." Examiner's Answer, page 10. This is incorrect, however. Claim 55 clearly states that it is the anchor end and the user end of the active fastening surface, and not the article in general, that is configured to provide the recited shear strength differential.

In summary, the Examiner has not established a *prima facie* case of anticipation of claim 55. The Examiner's rejection of claim 55 is not fully set forth in either the final Office action or the Examiner's Answer, nor has the Examiner taken sustainable positions with respect to her interpretations of either the claims or Kuen et al. As a result, appellants request that the Examiner's rejections be overturned and the claims pending in this application be allowed.

Conclusion

In addition to the reasons set forth in appellants' Appeal Brief, the rejections of the claims on appeal are in error for the reasons set forth above. Therefore, appellants again request that the Examiner's rejections of claims 3-5, 7-9, 11-16, 20, 26, 28-31, 33, 35, 52-55, and 62 be reversed.

Appellants do not believe that any fee is due. However, the Commissioner is hereby authorized to charge any deficiency or overpayment of any fees to Deposit Account No. 19-1345.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard L. Bridge". The signature is fluid and cursive, with the first name "Richard" and last name "Bridge" clearly distinguishable.

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